

SHORT TITLE: Certificate of need for hospitals; codification;
repealer; effective date; emergency.

STATE OF OKLAHOMA

1st Session of the 46th Legislature (1997)

SENATE BILL NO. 410

By: Herbert

AS INTRODUCED

An Act relating to institutional health services; declaring public policy and purpose; requiring application fee; defining terms; stating criteria for institutional health services; stating what shall not be defined as institutional health services; requiring application be considered on basis of need, availability and impact; requiring form and content of certain plan and notification of filing; requiring establishment of certain review and procedures thereto; requiring application and examination of application; requiring certain notification and consideration of certain criteria; requiring establishment of weights for criteria; allowing withdrawal of application without prejudice; stating time frame for issuance or denial of certificate of need; stating certificate of need is nontransferable; stating grounds for approval of certificate of need; requiring order granting or denying application, transmission of order and notification of the public; requiring detailed statement of reasons under certain circumstances; allowing written request for reconsideration of determination and requiring review; requiring hearing and written findings under certain circumstances; allowing appeal and setting venue;

providing for validity period of certificate of need and extension; requiring certain reports and providing penalty for failure to submit; prohibiting offering or development of institutional health service or grant of funds or issuance of license unless certificate of need has been obtained; providing penalties; allowing administration of oath and receipt of funds; requiring certain report; providing for codification; repealing 63 O.S. 1991, Sections 2656.1 and 2656.2, which relate to administration of oaths and annual reports; providing an effective date; and declaring an emergency.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2656.11 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. The Legislature hereby declares that it is the public policy of the State of Oklahoma that the offering and development of institutional health services should be made in a planned, orderly and economical manner consistent with appropriateness of services and needs of the people in various regions and districts of the state. It is the purpose of the Legislature to further such public policy by providing procedures for submitting plans and applying for and obtaining a certificate of need or exemption prior to the offering, development, acquisition or change of an institutional health service by prohibiting any such offering, development, acquisition or change, except pursuant to a certificate of need or

exemption from said certificate issued by the State Department of Health or by the State Commissioner of Health when the Department so authorizes or when authorized by Sections 1 through 14 of this act.

B. Each application for a certificate of need pursuant to the provisions of this section, except for those applications filed by state agencies, shall be accompanied by an application fee equal to three-fourths of one percent (3/4 of 1%) of the projected cost of the project, with a minimum of One Thousand Five Hundred Dollars (\$1,500.00) and a maximum of Ten Thousand Dollars (\$10,000.00).

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2656.12 of Title 63, unless there is created a duplication in numbering, reads as follows:

As used in Sections 1 through 14 of this act:

1. "Health care facility" means:

- a. hospitals and related institutions as defined in Section 1-701 of Title 63 of the Oklahoma Statutes,
- b. health maintenance organizations, ambulatory surgical centers, kidney disease treatment centers, community mental health centers, alcoholism and substance abuse treatment facilities other than transitional living facilities, rehabilitation centers, halfway houses, and persons and agencies offering or providing only outpatient services, and
- c. such institutions or services operated by the federal government in this state as may be authorized by the United States Congress;

2. "Institutional health services" means:

- a. only those new services or programs to be established and operated by a health care facility which require new or additional licensed beds, a new license or a change in licensure, except as otherwise provided in Sections 1 through 14 of this act,

- b. any increase in bed capacity of a health care facility, provided that any decrease in bed capacity or in services shall be exempt from the provisions of Sections 1 through 14 of this act and provided that any application for an increase in the number of licensed beds in an existing health care facility shall be reviewed and approved by the Commissioner if the application meets the following criteria:
- (1) the increase in bed capacity in any calendar year is no more than five percent (5%) of the applicant's total licensed beds in each facility, but not to exceed ten beds in any calendar year,
 - (2) the total capital cost of the project is less than the amount prescribed in subsection e of this section, and
 - (3) the rate of occupancy of the beds in the existing facility is an average of seventy-five percent (75%) for the preceding year,
- c. long-term care services, as defined in Section 1-852 of Title 63 of the Oklahoma Statutes, provided that any health care facility proposing to offer a long-term care service shall make application with the State Department of Health for a certificate of need pursuant to the provisions of Section 1-852 of Title 63 of the Oklahoma Statutes and, if granted a certificate of need, shall obtain licensure for such long-term care service pursuant to the provisions of the Nursing Home Care Act and shall comply with long-term care certification requirements,
- d. swing beds for which a health care facility qualifies under guidelines of the federal Medicare Act shall be exempt from the provisions of Sections 1 through 14 of

this act; under no circumstances shall a health care facility be eligible for or convert more than ten beds to swing bed status,

- e. any capital expenditure by or on behalf of a health care facility of Five Million Dollars (\$5,000,000.00) or more, including predevelopment activities such as arrangements and commitments for financing, site acquisition and architectural designs, plans, working drawings, and specifications, except that any refinancing of existing debt of a health care facility shall be exempt from review,
- f. acquisition of a health care facility by purchase, lease, donation or through transfer of stock or corporate merger, provided that: Reviews of proposed acquisitions shall be made by the State Commissioner of Health. If the Commissioner finds that a proposed acquisition is consistent with the criteria and standards for review of such projects, then the Commissioner shall issue a certificate of need. If the Commissioner finds that the proposed acquisition is not consistent with the criteria the project will be referred to the Board for final determination. The Commissioner's determination to approve the proposed acquisition or to refer it to the Commission shall be made no later than fifteen (15) days following the day the application is determined to be complete and ready for review or the proposed acquisition shall be automatically approved. Proposed acquisitions shall be reviewed against standards adopted by the Board which relate only to the acquirer's capability to operate a long-term care facility, and

g. initial acquisition by any person or entity of major medical equipment costing Three Million Dollars (\$3,000,000.00) or more, provided that this provision shall not apply to the acquisition of major medical equipment to replace equipment already available and in use at the health care facility. Acquisitions shall include donations, leases and transfers for less than fair market value;

3. "Institutional health services" shall not mean:

- a. any expenditures, acquisitions, or services if offered by a health maintenance organization as specified in the Public Health Service Act, 42 U.S.C., Section 1527(b)(1), or a health care facility controlled, directly or indirectly, or leased by a health maintenance organization if such facility has made an application for and has been granted an exemption from review by the Board. Application for exemption shall be submitted on forms supplied by the Board and shall include information upon which the Board can make the determination to grant an exemption. Once such an exemption or a certificate of need is granted, the health care facility or equipment to which the exemption or certificate applies may not be sold, leased, or acquired and a health care facility may not be used by any other person unless a certificate of need or another exemption has been granted, or
- b. any service for which a certificate of need has been issued or which was not covered under law prior to the effective date of this act; and

4. "Home health services" means those items and services listed in 42 U.S.C., Section 1395x(m), and any subsequent amendments thereto, provided by a home health agency.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2656.13 of Title 63, unless there is created a duplication in numbering, reads as follows:

Notwithstanding the provisions of Section 6 of this act, when an application is made by an osteopathic or allopathic facility for a certificate of need to construct, expand or modernize a health care facility, acquire major medical equipment, or add services, the need for that construction, expansion, modernization, acquisition of equipment or addition of services shall be considered on the basis of the need for and the availability in the community of services and facilities for osteopathic and allopathic physicians and their patients. The State Department of Health shall consider the application in terms of its impact on existing and proposed institutional training programs for doctors of osteopathy and medicine at the student, internship and residency training levels.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2656.14 of Title 63, unless there is created a duplication in numbering, reads as follows:

The State Department of Health shall prescribe a form and content for the annual Hospital Utilization Survey (Plan) of all hospitals which shall include a statement of the plans for expansion, addition or discontinuance of services of hospitals for the following three (3) years. The Department shall notify hospitals that such survey and other periodic reports shall be filed with the Department.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2656.15 of Title 63, unless there is created a duplication in numbering, reads as follows:

The State Department of Health shall establish and conduct a periodic review as to the appropriateness of those institutional health services designated by it. The Board shall consider the need for and accessibility, availability, financial viability,

cost-effectiveness, and quality of services provided. Procedures for this review shall be in accordance with federal law and regulations.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2656.16 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. Every governmental or private entity, desiring to offer new or develop, acquire or change institutional health services, unless the State Board of Health or the State Commissioner of Health has granted an exemption, shall make application to the State Board of Health, in the form, and accompanied by information, as the Board shall prescribe.

B. The Board shall promptly examine each application and shall transmit to such reviewers as it may select, for the purpose of determining whether the application is complete. Within fifteen (15) days of receipt of each application, the Board shall notify the applicant that the application is complete or that additional information is required. Investigation and review of an application shall be initiated only after the Board has determined that the application is complete.

SECTION 7. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2656.17 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. Promptly upon determination that an application is complete, the State Department of Health shall notify affected parties and other reviewing bodies and shall cause an investigation to be made of the need for and appropriateness of the proposed offering, development, acquisition or change.

B. The investigation shall include consideration of the following criteria, except as otherwise specified in Sections 1 through 14 of this act:

1. The appropriateness and adequacy of existing services in a region or district as they relate to the needs of the population served or to be served, and the relationship of the proposed service thereto;

2. The availability of alternative, less costly or more effective methods for providing service;

3. In the case of health services proposed to be provided:

- a. the availability of resources, including health manpower, management personnel and funds for capital and operating needs, for the provision of such services,
- b. the effect of the means proposed for the delivery of such services on the clinical needs of health professional training programs in the areas in which such services are to be provided,
- c. if such services are to be available in a limited number of facilities, the extent to which the health professions schools in the area will have access to the services for training purposes,
- d. the availability of alternative uses of such resources for the provision of other health services, and
- e. the extent to which such proposed services will be accessible to all the residents of the area to be served by such services;

4. The special needs and circumstances of those entities which provide a substantial portion of their services or resources, or both, to individuals not residing in the health service areas in which the entities are located or in adjacent health service areas. Such entities may include medical and other health professions schools, multi-disciplinary clinics, specialty centers and such other entities as the federal Secretary of Health and Human Services may by regulation prescribe;

5. In the case of construction projects:

- a. the costs and methods of proposed construction, including costs and methods of energy provision, and
- b. the probable impact of a construction project on the costs of providing health service by the person proposing such construction project and on the cost and charges to the public of providing health services to other persons;

6. The extent to which the services proposed will improve the availability and access to services for underserved populations;

7. The special needs and circumstances of health maintenance organizations;

8. The special circumstances of health service institutions and the need for conserving energy;

9. The factors which affect the effect of competition on the supply of the health services being reviewed;

10. Improvements or innovations in the financing and delivery of health services which foster competition and serve to promote quality assurance and cost effectiveness;

11. In the case of health services or facilities proposed to be provided, the efficiency and appropriateness of the use of existing services and facilities similar to those proposed; and

12. Any other criteria established by the State Board of Health in accordance with federal law or regulation.

C. The Department shall establish weights for the criteria specified in subsection B of this section according to the purpose for which a particular review is being conducted or the type of health service being reviewed.

D. The Department shall afford each applicant the opportunity to withdraw an application from investigation, without prejudice, upon written request to the Department until such time as a determination has been made by the Department.

E. The Department shall issue or deny a certificate of need no later than ninety (90) days from the commencement of the review cycle or the certificate of need shall be automatically approved, unless the Department and the applicant agree to a longer review period. The review cycle for an application shall commence on the first day of the month following the month in which the application is determined to be complete. Once a certificate of need is issued it shall not be transferable.

SECTION 8. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2656.18 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. No certificate of need shall be issued by the State Department of Health unless after investigation it determines the following, or unless otherwise specified in Sections 1 through 14 of this act:

1. The action proposed in the application for the certificate of need is necessary and desirable in order to appropriately provide necessary institutional health services in the region or district to be served;

2. The proposed action can be economically accomplished and maintained and can be operational on or before a date the Department determines to be appropriate;

3. The proposed action will contribute to the orderly development of health services in the region or district;

4. The proposed action is consistent with the State Health Plan, except in emergency situations; and

5. The criteria for investigation as specified in subsection B of Section 7 of this act have been considered.

B. Notwithstanding the provisions of subsection A of this section, if a health maintenance organization or health care facility which is controlled, directly or indirectly, by a health maintenance organization applies for a certificate of need, the

application shall be approved if the Department makes the following findings:

1. Approval is required to meet the needs of the members of the health maintenance organization and of the new members which such organization can reasonably be expected to enroll; and

2. The health maintenance organization is unable to provide, through services or facilities which can reasonably be expected to be available to the organization, its institutional health services in a reasonable and cost-effective manner which is consistent with the basic method of operation of the organization and which makes such services available on a long-term basis through allopathic, chiropractic and osteopathic physicians and other health professionals associated with it.

C. 1. Notwithstanding the provisions of subsection A of this section, an application for a certificate of need for a capital expenditure to eliminate or prevent imminent safety hazards as defined by federal, state or local fire, building or life safety codes or regulations, or to comply with state licensure standards, or to comply with accreditation standards, compliance with which is required to receive reimbursements under Title XVIII of the Social Security Act or payments under a state plan for medical assistance approved under Title XIX of such act, shall be approved unless:

- a. the Department finds that the facility or service is not needed, or
- b. the project is not consistent with the State Health Plan.

2. Approval under this subsection shall cover only the capital expenditure to eliminate or prevent the hazards or to comply with standards described above.

D. When the Department determines that a certificate of need should or should not be issued, an order shall be issued granting or denying the application and giving the reasons for such

determination. If the certificate of need is granted, the Department shall set the maximum capital expenditure for the project. A copy of the order shall be transmitted to the applicant, other reviewing bodies and any other parties. The general public shall be notified by means of news releases issued to newspapers of general circulation and to other public media. If the decision of the Department is inconsistent with the recommendation of any reviewer specified by the Department, the Department shall forward to the reviewer a detailed statement of its reasons.

E. For a period of thirty (30) calendar days following the issuance of an order, the Department shall accept a written request from any person that the Department reconsider its determination or any determination made by the Department. Within thirty (30) days following receipt of the request, the Department shall determine, with respect to the information submitted in connection with such request, whether such information was available or known to the Department, whether it constitutes good cause, and whether it warrants reconsideration of its decision. If the Department determines that good cause for reconsideration is shown, it shall conduct a hearing within thirty (30) days of the request. Written findings shall be issued within forty-five (45) days following the hearing.

SECTION 9. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2656.19 of Title 63, unless there is created a duplication in numbering, reads as follows:

Any party aggrieved by a decision of the State Department of Health on an application for a certificate of need pursuant to Sections 1 through 14 of this act shall be entitled to appeal the determination of the Department under the provisions of Sections 317 and 318 of Article II of the Administrative Procedures Act; provided, that the venue for such appeal shall be in Oklahoma County

or in the county in which the facility at issue in the application is located.

SECTION 10. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2656.20 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. A certificate of need shall be valid for the period specified by the State Department of Health, which may vary, based on the nature of the project. However, no certificate of need shall be granted for an initial period of more than four (4) years.

B. The Department may, for good cause shown and upon written request filed with the Department prior to the expiration of the certificate of need, extend the validity of the certificate for a period not to exceed six (6) months.

C. The holder of a certificate of need shall make a written report at the end of each six-month period following issuance, concerning progress made toward implementation. The holder of a certificate of need shall make a final report to the Department when the service for which the certificate of need has been issued is operational. All such reports shall relate to the timetable established by the Department.

D. The Department shall have the power to withdraw a certificate of need if the holder willfully fails to file reports or make a good faith effort to meet the timetables.

SECTION 11. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2656.21 of Title 63, unless there is created a duplication in numbering, reads as follows:

No institutional health service shall be offered or developed unless the State Department of Health has issued a certificate of need therefor as provided in Sections 1 through 14 of this act. No governmental entity shall approve any grant of funds or debentures or issue or renew any license for an institutional health service,

unless the certificate of need as provided by this act has been obtained.

SECTION 12. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2656.22 of Title 63, unless there is created a duplication in numbering, reads as follows:

The offering or development of an institutional health service without a certificate of need therefor shall constitute a misdemeanor, punishable by payment of a fine in an amount not to exceed Five Hundred Dollars (\$500.00). If the State Department of Health, through one of its agents or representatives, notifies in writing by certified mail return receipt requested the person who has unlawfully commenced the offering or development of an institutional health service to cease and desist, then each day that such person continues to offer or develop such services shall be a separate offense. If any person continues to offer or develop an institutional health service after the issuance of a cease and desist order, the Department shall seek an injunction to prohibit the continued offering or development of the service.

SECTION 13. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2656.23 of Title 63, unless there is created a duplication in numbering, reads as follows:

The State Department of Health may administer oaths at any hearing or investigation conducted pursuant to Sections 1 through 14 of this act, and may receive federal grant or contract funds by complying with the requirements therefor.

SECTION 14. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2656.24 of Title 63, unless there is created a duplication in numbering, reads as follows:

The State Department of Health shall prepare and distribute an annual report to the Oklahoma Legislature, to any health systems agency as established by federal law, and to any other person who requests the report, which shall include the status of each review

currently being conducted, the reviews completed since the last report and a general statement of the findings and decisions made in the course of such reviews.

SECTION 15. REPEALER 63 O.S. 1991, Sections 2656.1 and 2656.2, are hereby repealed.

SECTION 16. This act shall become effective July 1, 1997.

SECTION 17. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

46-1-0040

CJ